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Relations Between the Parliament and the Government in the Romanian Constitutional Law

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Abstract

The issue of trichotomy of powers, their cohabitation, regardless of the form of government, or political regime, has generated over time doctrinal controversy, not only in terms of theory but also in terms of practice.This paper aims at analyzing the existing relations between the two powers reflected in the practice of organization and functioning of power structures in Romania according to constitutional rules.Fundamental legal institutions were analyzed as a means of achieving the principle of separation and balance of powers, e.g. legislative initiative, legislative delegation and accountability, the motion of censure.Regarding the role of parliament, it should be circumscribed new political and legal realities, determined by the setting of EU as supranational and intergovernmental organization with specific legal nature.

Keywords: Legislative Initiatives, Legislative Delegation, Ary Control;

1. Introduction

The issues of the principle of separation of powers, of operating mechanisms and their collaboration within constitutional democracy have concerned and still concerns today. Thus, the model imagined by Montesquieu has not lost its actuality, becoming the fundamental principle underlying the rule of law.

Designed as a barrier against abuse and arbitrary bourgeois, the role of this theory consisted in promoting this theory, the representative system, turning the democratic relationship between the sovereign holder of power (people) and the state organization of political power. The relations between the three branches: legislative, executive and judicial, are relations of cooperation that literature calls ceek and balances, meaning, their mutual supervision to rebalance the relationship between them (Calinoiu & Duculescu, 2010). In this sense, any Constitution requires an approach of the relationship between legislative, executive and judiciary as fundamental legal norm, according to which the act of governing is coherent and democratic. The separation of those who make the law (legislative power), those who apply (executive) and those who interpret it (judiciary) is meant to prevent the establishment of a dictatorial regime (Tamas, 1996). The classification of political regimes is founded on effective mechanisms of guaranteeing the separation of powers by creating institutions that reflect the compliance with the law, guaranteeing the state of law. If presidential regimes recognize the important role of reciprocal control

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of powers, parliamentary regimes and semi-presidential ones practice a more obvious cooperation of powers, creating strong interference of functions and the multiplication of relations between the executive and the legislature.

A historical perspective on the evolution of the principle of separation of state powers, referring to its constitutional regulation, reveals a concern of the constituent since 1866, the year of the adoption of the original Romanian Constitution, subsequently maintained in subsequent constitutions regulations in 1923 and 1938. The Romanian experience after 1938 finds its decadence, its transition from corporatism to totalitarian communist is marked by political monopoly of a single political entity. Not recognizing the principle of separation of powers, the basic act of 1965 failed to incorporate any of Romanian constitutional traditions in terms of legislation and its application depending on the organs and institutions entitled to do so.

Regarding the current constitutional rules, the Constitution of Romania, republished in 2003, provides in arti.4 that: the state is organized according to the principle of separation of powers; in practice, however, a delicate balance has been proven, whose limits haven't delayed to be exposed by constitutional crisis, in a more or less dramatic manner.

The option of the post-December constitutional legislator for a semi-presidential republic with a dual executive in which, the president shares power with a prime minister, was similar to that of most communist states after 1989, with various features to be identified and analyzed in the present material.

To get a clearer picture of the Romanian semi-presidentialism we need to identify the powers of the president, but also the relations of power between the legislative and executive branches as well as the intra executive power relations, as regulated at a constitutional level. The possible tensions, conflicts between legal and executive or between the president and prime minister can be due to an ambiguous division of powers between the three institutions.

2. Relations between the Parliament and the Government lawmaking process

The relations between the Parliament and the Government in achieving the legislative function of the state can be characterized by two main aspects that reveal, on one hand, the cooperation of public authorities in the exercise of this function, and on the other, their mutual influence in this area.

In what regards the legislative function, it should be noted, at the outset, the different contribution of the two authorities and their specific tasks, which traditionally place in the foreground the legislative authority, which appears naturally in also from the constitutional statements – the Parliament is the supreme representative body of the Romanian people and the sole legislative authority of the country (Article 61 paragraph 1 of the Constitution of Romania).

In Romania, the head of state has no legislative initiative, this right being acknowledged by the Government, MPs and senators as well as a number of at least 100 000 citizens entitled to vote, right that is exercised by transmitting the project of the law to the competent Chamber to adopt, as a first notified Chamber (Article 74 alin. 3 of the Romanian Constitution). According to the existing constitutional rules manners concerning taxation, international affairs, amnesty and pardon cannot be the object of citizens' legislative initiative. (art. 74 paragraph 2 Romanian Constitution and Act regarding citizens exercising legislative initiative no. 189/1999, republished in 2004)

From examining the constitutional norms it is obvious that the right of legislative initiative provides a decisive participation of the Government in the legislative process, having the opportunity (by developing their own law projects and assisting other subjects to achieve its right of legislative initiative) of directing and orienting the legislative policy of the state.

Another way of interference of the executive in the drafting of laws is the adoption of the draft law in the conditions of taking liability by the Government. In accordance with Article 114 paragraph 1, it can promote a draft law by a special procedure, existing two possible situations: either the rapid adoption of that project or, the dismissal of the Government in its entirety. The Government will be dismissed if a motion of censure will be submitted by at least a quarter of the number of senators and deputies within three days after submission of the draft law and will be passed by a majority of deputies. If the Government will not be dismissed, the draft law presented, amended or

supplemented, will be considered adopted and the application of the program or general policy statement becomes binding for the Government.

It is well known that in Romania, in the last years, governing has been accomplished by the government accountability, which is very convenient for the Government as it can get for a necessary law to be adopted in a relatively short time and without amendments by deputies and senators. To avoid its misuse in Romania, in constitutional practice, the constituent legislator will set limits for the categories of laws that can be adopted by taking responsibility, and for the number of assumptions in a parliamentary session.

Another way of conducting relations between the Parliament and the Government is the delegated legislation, regulated by Article 115 of the Romanian Constitution. The legislative delegation is a task incumbent on the legislature that empowers by the enabling law, for a certain period of time and under certain conditions, the Government to emit regulatory laws (ordinances) in areas not covered by organic laws. Thus, the legal institution of delegated legislation is an important mean of action in the mechanism of exercising the rule of law, ordinances being governmental acts within constitutional relationships, which are issued on the basis of conferred powers as an extension of government powers.

The Constitution provides, however, the situation where delegated legislation may result in emergency ordinances, which allows the Government to issue in certain exceptional cases, of which regulation cannot be postponed, regulatory laws without Parliament's initial consent. In the silence of the law, the legislator has not regulated the cases that would require exceptional circumstances, omission embodied in the excessive number of emergency ordinances, regulating the situations in which they cannot be adopted. Thus emergency ordinances cannot be adopted in constitutional law, they cannot affect the status of state institutions, the rights and freedoms provided by the Constitution, voting rights, and cannot refer to measures of forcible transfer of assets to public property. (Article 115 paragraph 6 Romanian Constitution).

Accordingly, the Constitution empowers the Government to issue emergency ordinances only during exceptional situation, in order to adopt urgent measures dictated by the need to prevent or eliminate public hazards. The content of this regulation must be in proper legitimacy, as mentioned above, and their duration can only be provisional.

In conclusion, in delegated legislation, the Government must act, on one hand, under the control of the Parliament, which has the obligation if approving ordinances, and on the other hand, under the control of constitutionality, exercised by the Constitutional Court (Smith, 2011).

Re-examining the law and the promulgation of the law are two legal institutions regulated constitutionally. The first consists of the possibility for the president to return the law to review the legislative body, the second is the act by which the President authenticates and invests the adopted enforceable law. Promulgation represents the right of the executive power to submit an adopted legislative act to control, both in terms of the nature of the provisions of the law and the terms of its constitutionality.

3. Relations between the Parliament and the Government - parliamentary control function

Balancing the relations of powers between the legislative and executive is done by the legislature by parliamentary control, governed constitutionally, exercised over the Government and the President. The function of control of the supreme legislature over the Government does not mean that the body exercising the executive power is subordinated to the Parliament, but expresses only one modality of collaboration between the institutions of a democratic state.

Specialized literature lists as the main embodiment of parliamentary control the following:" a) reports, messages, programs presented to the Parliament, b) analysis in parliamentary committees, c) questions and inquiries, d) the right to MPs and Senators to request and obtain necessary information, e) resolving complaints of citizens ". If in parliamentary control exercised over the government, the Parliament can act at any time, for the control of the President, the Parliament intervenes only in two cases: the procedure of suspension of the President and the procedure of indictment for high treason.

The most eloquent way of control and reciprocal balances between the legislative and executive branches is the motion of censure, which is on one hand, the most serious sanction that the Parliament may apply the Government and can result, if adopted, in the dismissal of the Government, and on the other hand, politically speaking, it gives political expression to political accountability of the executive to the legislature.

From the analysis of the existing constitutional provisions in conjunction with current practice, we can draw the following conclusion: executive rule in favor of the legislature, due to the recourse of practice of simple and emergency ordinances as well as liability through draft laws.

4. Conclusions

Current semi-presidential regime has many loopholes. From the ambiguities of the constitutional provisions regarding the relations between the two heads of the executive to the disputes of pride and legitimacy between institutions, we can say that the system of government in Romania has to be reformulated. Between the two institutional actors invoked obsessively, the President and the Parliament, stands an ignored citizen. The appeal to the nation can be meaningful only if it can provide consistency and credibility civic materializing. Placing emphasis on the citizen and on its decision making autonomy is the central theme of the fundamental law reform agenda (Carp & Stanomir, 2008).

Review of the 2003 Constitution failed to solve shortcomings of the imperfect semi-presidential regime where relationship between the President, Prime Minister, Parliament and the judiciary are not only clearly *divided* to avoid overlapping of functions, but also *combined* judiciously in order to insure political balance.

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